

IN THE MATTER OF
DIANE R. SWAN, LCPC

Respondent

License Number: LC3149

* BEFORE THE MARYLAND
* STATE BOARD OF PROFESSIONAL
* COUNSELORS AND THERAPISTS
* Case Number: 2014-34

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On January 6, 2017, the Maryland State Board of Professional Counselors and Therapists (the "Board") charged **DIANE R. SWAN, LCPC**, (the "Respondent"), License Number LC3149, with violating the Maryland Professional Counselors and Therapists Act (the "Act"), codified at Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 17-101 *et seq.* (2014 Repl. Vol.), and the Board's regulations under Md. Code Regs. ("COMAR") 10.58 *et seq.*

On March 7, 2017, a Case Resolution Conference was held before a committee of the Board. As a resolution of Board Case Number 2014-34, the Respondent agreed to enter into this public Consent Order consisting of the following Findings of Fact, Conclusions of Law, and Order.

The provisions of the Act and the Board's regulations pertinent to this Consent Order provide:

Health Occ. II § 17-509. Denial, probation, suspension or revocation of certificate applicant or holder.

Subject to the hearing provisions of § 17-511 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may . . . place any licensee . . . on probation, reprimand any licensee . . . , or suspend or revoke a license of any licensee . . . if the . . . licensee . . . :

- (8) Violates the code of ethics adopted by the Board;

SEP 20 2017

- (13) Violates any rule or regulations adopted by the Board; and
- (16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy.

COMAR 10.58.03.04 Ethical Responsibility.

A. A counselor shall:

- (7) Maintain accurate records; [and]
- (11) Be familiar with and adhere to this Chapter[.]

COMAR 10.58.14.05 Standards for Supervision.

A. A supervisor shall:

- (4) Ensure that a supervisee has read and is knowledgeable about:
 - (a) Health Occupations Article, Title 17, Annotated Code of Maryland; and
 - (b) COMAR 10.58, including the code of ethics chapter, COMAR 10.58.03.

COMAR 10.58.14.07 Responsibilities of a Supervisor.

A supervisor shall:

- A. Establish a written contract for supervision initiated before beginning supervision;
- F. Ensure that a supervisee has read and is knowledgeable about:
 - (a) Health Occupations Article, Title 17, Annotated Code of Maryland; and
 - (b) COMAR 10.58, including the code of ethics chapter, COMAR 10.58.03.
- H. Be responsible for the professional practices of supervisees;
- J. Provide written evaluation of the supervisees progress to the supervisee every 3 months[.]

FINDINGS OF FACT

The Board makes the following Findings of Fact:

BACKGROUND

1. At all times relevant to these charges, the Respondent was licensed to practice clinical professional counseling in the State of Maryland. The Respondent was originally licensed to practice clinical professional counseling in Maryland on or about May 25, 2009, under License Number LC3149. The Respondent allowed her license to expire on or about January 31, 2015, without filing for a renewal.

2. At all times relevant to these charges, the Respondent was an Approved Alcohol and Drug Supervisor in Maryland. The Board approved the Respondent to serve as an alcohol and drug supervisor on or about March 12, 2012, under Reference Number 551.

3. At all times relevant to these charges, the Respondent was employed as a substance abuse supervisor at an addiction treatment center in Hagerstown, Maryland (the "Facility").¹

4. The Board initiated an investigation of the Respondent after receiving an anonymous complaint on or about November 14, 2013, from an individual alleging that the Respondent was falsifying supervision records of a trainee (the "Trainee").

BOARD INVESTIGATION

5. In furtherance of its investigation, the Board issued a subpoena, dated January 13, 2014, to the Respondent for all supervision and employment records with respect to the Trainee. In late January 2014, the Respondent provided the Board with

¹ The names of individuals, hospitals or healthcare facilities involved in this case are confidential and not disclosed in this document.

the Trainee's supervision records. These records span from July 27, 2011, to January 6, 2014. Included in the supervision records were a Contract for Supervision, dated July 27, 2011, signed by the Respondent and the Trainee, and six documents entitled "90 Day Progress Review," dated April 4, 2012, October 13, 2012, January 7, 2013, April 3, 2013, October 2, 2013, and January 6, 2014, each signed and dated by the Respondent and the Trainee.

6. On or about January 14, 2014, a Board investigator received a telephone call from an individual (the "Complainant"), who identified herself as the anonymous complainant in this case. During the conversation, the Complainant reiterated that the Respondent was creating false supervision records with respect to the Trainee.

7. In course of the investigation, the Board investigator interviewed several witnesses, including the Complainant, the Trainee, other employees at the Facility and the Respondent.

8. On or about April 15, 2014, the Board investigator conducted an interview of the Trainee under oath. During the interview, the Trainee stated that the Respondent supervised him for the past couple of years but did not keep contemporaneous performance evaluations of him.

9. On or about June 11, 2014, the Board investigator interviewed the Respondent under oath. During the interview, the Respondent was shown the supervision records for the Trainee she submitted to the Board. The Respondent admitted that she failed to keep contemporaneous "90 Day Progress Review" of the Supervisee.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's failure to keep contemporaneous "90 Day Progress Review" of the Supervisee constitutes, in whole or in part: committing an act of immoral or unprofessional conduct in the practice of nonclinical counseling, in violation of Health Occ. II § 17-509(16); and violating the code of ethics and any rule or regulations adopted by the Board, specifically COMAR 10.58.03.04A(7) and (11), COMAR 10.58.14.05A(4)(a) and (b), and COMAR 10.58.14.07A, F, H and J, in violation of Health Occ. II § 17-509(8) and (13) respectively.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15th day of September, 2017, by a majority of the Board considering this case:

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further

ORDERED that, the Respondent is placed on **PROBATION** until she has fully, timely and satisfactorily complied with the following terms and conditions:

1. The Respondent shall enroll in and successfully complete a Board-approved comprehensive 3 credit hour course in professional ethics at an accredited college or university. The course may be taken online. The Respondent shall submit the course description/syllabus to the Board for approval prior to enrolling in the course. The Board reserves the right to reject her proposed course and require submission of an alternative proposal. The Board will approve a course only if it deems the curriculum and duration adequately fulfills the Respondent's ethical needs. This course shall be in addition to any course required to satisfy the continuing education requirements for the applicable 2-year licensure renewal period.
2. The Respondent shall pay a fine in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**, by certified check or money order to the Maryland State Board of Professional Counselors and Therapists.


3. The Respondent shall comply with the Maryland Professional Counselors and Therapists Act and all applicable laws, statutes and regulations pertaining thereof.

AND IT IS FURTHER ORDERED that upon the Respondent's submission to the Board of verification of her full and satisfactory completion of and compliance with the terms and conditions of her probation, the Board may terminate the Respondent's probation through an order of the Board; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any sanction which the Board may have imposed in this case, including additional probationary terms and conditions, a reprimand, suspension, revocation and/or a monetary penalty; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions, §§ 4-101 *et seq.* (2014).



Risa Ganel, LCMFT
Board Chair
Maryland State Board of Professional
Counselors and Therapists

CONSENT

I, Diane R. Swan, LCPC, acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

10-11-17
Date

Diane R. Swan, LCPC
Diane R. Swan, LCPC
Respondent

NOTARY

Pennsylvania
STATE OF MARYLAND
CITY/COUNTY OF Charlottesville/Franklin

I HEREBY CERTIFY that on this 11 day of October,
2017, before me, a Notary Public of the foregoing State and City/County personally
appear Diane R. Swan, LCPC, and made oath in due form of law that signing the
foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.

Debra A. Parson
Notary Public

My commission expires:

